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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of:
Stephen F. Bush et al.


Serial No.: 09/697,562

Filed: October 26, 2000

For: COMMUNICATIONS NETWORK
FOR DYNAMIC
REPRIORITIZATION

§
§ Group Art Unit: 2155
§
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§ Examiner: Philip B. Tran
§
§
§ Atty. Docket: RD27644-2/YOD
§ GERD:0239
§

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July 3, 2006	
Date	Lynda Howell

REPLY BRIEF

This is in response to the Examiner's Answer mailed on May 3, 2006.

In the Examiner's Answer, the Examiner noted that the rejection under 35 U.S.C. §112 is now moot in view of entry of amendments. Applicants thank the Examiner for simplifying these issues for Appeal.

Regarding the rejections in view of prior art, both the Examiner's argument and the Response to Appellants' arguments appear to crystallize two issues. That is, whether Aimoto teaches (1) assigning a merit value to messages; and (2) reprioritizing messages based upon such a merit value.

Appellants note in passing that the Examiner stated axiomatic law regarding arguing references separately. Appellants' position is *not* that the references separately do not make the claimed invention obvious. Rather, because Aimoto was argued to teach the claimed merit value and reprioritization based upon such a merit value, Appellants simply observe that Aimoto provides no such teachings. The secondary reference, not even argued by the Examiner to provide such teachings, is similarly lacking. Therefore, it is the Appellants' position that no combination of the references could possibly reach the claimed invention.

Aimoto fails to teach a merit value.

The Examiner analyzed Aimoto as teaching a merit value, as claimed. The Examiner, moreover, argued that in its most broad reasonable interpretation, the claimed "merit value" reads on some type of prioritization taught by Aimoto. The Examiner refers to several passages in Aimoto, primarily found in columns 5 and 6 of the reference. Aimoto does, in these passages, discuss a "relaying priority", but this does not appear to be anything similar to a merit value. Although Appellants are aware that limitations and details set forth in the specification cannot be read into the claims, they would also stress that the claims *necessarily* are interpreted in view of the specification. Accordingly, the "relaying priority" of Aimoto simply does not correspond to the claimed "merit value" when that term is interpreted in its broadest reasonable sense in view of the specification.

In contrast, the relaying priority of Aimoto appears simply to be a priority that is established by Aimoto's transmission priority control unit 5 when messages are received. The messages of Aimoto include certain information in the message data string, as illustrated in FIG. 3 of the reference. It is based on this information that the control unit places each message in a queue. This relaying priority is not, however, a merit value. Rather, the relaying priority is simply a priority established based upon the data contained in each received message that requires relaying. As such, it is simply a prioritization order that is followed by the transmission priority control unit 5.

Appellants submit and stress, then, that Aimoto simply does not establish any parameter similar to the claimed merit value.

Aimoto fails disclose reprioritization based upon any similar parameter.

The Examiner also relied upon Aimoto for teaching reprioritization. Appellants submit that, at best, Aimoto teaches *prioritization*, but no *reprioritization* is performed by the control unit. As noted above, received messages or packets that are to be relayed in Aimoto receive a relaying priority based upon such factors as the packet priority information, protocol information, network address, and so forth. This priority, then, results in assigning the packets to queues, such as for providing different bandwidths. However, no reprioritization is ever performed in Aimoto.

Where multiple messages are received, it is clear that Aimoto must prioritize these for relaying, where such relaying is to be performed. It does so by analyzing the information in each message. However, once established, this prioritization is never changed. Accordingly, at best, Aimoto prioritizes relaying of messages or packets, but never performs any reprioritizing.

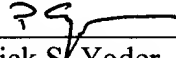
Even the prioritization of Aimoto is not based upon any parameter such a merit value, as claimed. The relaying priority is used to establish the initial, and *only*, prioritization assigned to each message or packet. Appellants observe, in passing, that even if the Board were to consider the relaying priority to be in any way analogous to a broadly interpreted “merit value”, the relaying priority is never used in Aimoto for *reprioritizing* messages for transmission.

In conclusion, Appellants again stress that it is *not* their position that the references, independently, do not teach the claimed invention. Such is not the nature of a combined reference obviousness rejection. However, insomuch as the Examiner relied upon Aimoto for teaching a merit value, and reprioritization of transmission of messages

based upon such a merit value, it is the Appellants' position that Aimoto, and therefore the combination, is lacking. Because the Examiner has failed to establish a *prima facie* case of obviousness, Appellants request the Board reverse the rejections, and instruct the Examiner to allow the pending claims.

Respectfully submitted,

Date: 7/3/06



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